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No. 88-697

In The

Supreme Court of the United States

October Term, 1988

RANDALL TRAHAN,

Petitioner,

v.

STATE OF NEBRASKA

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEBRASKA

BRIEF OF RESPONDENT STATE OF NEBRASKA IN OPPOSITION

STATE OF NEBRASKA, *Respondent*

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QUESTION PRESENTED

The question presented in this matter is whether the defendant had a reasonable expectation of privacy in garbage accessible to the public and placed for collection outside his home.

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BRIEF OF RESPONDENT STATE OF NEBRASKA IN OPPOSITION

The respondent, the State of Nebraska, respectfully requests that this court deny the Petition for Writ of Certiorari seeking review of the Opinion of the Supreme Court of Nebraska affirming criminal convictions of the defendant.

OPINION BELOW

The relevant opinion of the Supreme Court of Nebraska appears in the Appendix to the Petition for

Writ of Certiorari. Pursuant to Rule 34.2 of this Court, it is not attached hereto.

STATEMENT OF JURISDICTION

Jurisdiction of the instant matter rests with this Court pursuant to 28 U.S.C. § 1257(3).

STATUTES OR CONSTITUTIONAL PROVISIONS

At issue in this matter is the Fourth Amendment to the Constitution of the United States, which provides:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause, supported by oath or affirmation, particularly describing the place to be searched, and the person or thing to be seized.

STATEMENT OF THE CASE

In 1985, Detective Greg Chamberlain of the Fremont, Nebraska, Police Department was conducting gambling investigations. During the course of the investigations, Detective Chamberlain was informed that the defendant and his roommate were engaged in bookmaking activities (Exhibit 1).

On December 31, 1985, Detective Chamberlain obtained trash placed for collection outside the defendant's trailer home (Exhibit 1). In the trash, Detective Chamberlain found a line sheet containing team numbers and amounts wagered on each, as well as a bet sheet containing point spreads (Exhibit 1).

On January 3, 1986, Detective Chamberlain obtained trash placed for collection outside The Corner Bar, which was an establishment owned by the defendant and his roommate (Exhibit 1). The trash from The Corner Bar which Detective Chamberlain examined was obtained from garbage dumpsters located in an alley behind the bar (R48:9-21). The alley is a public thoroughfare through which public traffic may drive (R55:17-19), and through which pedestrian traffic may travel. In the trash, the detective found numerous bet sheets showing point spreads on college bowl games (Exhibit 1).

On approximately eight occasions between January 4, 1986, and November 13, 1986, Detective Chamberlain obtained trash placed for collection outside either the defendant's trailer home or The Corner Bar (Exhibit 1).In examining the trash, the detective found numerous bet sheets, line sheets, and lists of names with corresponding amounts of money (Exhibit 1).

Detective Chamberlain received anonymous information that payoffs were made at The Corner Bar in white envelopes with the individuals' names on them (Exhibit 1). On January 4, 1986, when the detective examined the trash placed for collection at The Corner Bar, he found two white envelopes bearing the names "Randy" and "Jay" (Exhibit 1). In March, 1986, Detective Chamberlain

was informed by the Omaha, Nebraska, office of the Federal Bureau of Investigation that agents at said office had information that the defendant was involved in bookmaking activities in Fremont, Nebraska (Exhibit 1).

Based upon the above information, on November 17, 1986, Detective Chamberlain obtained a warrant to search the defendant's trailer home for gambling records and books (Exhibit 2). The warrant was executed on November 18, 1986 (R16:15-18). In executing the search warrant, officers found various types of gambling papers (R20:2-21:21; Exhibits 3, 4 and 5).

While assisting with the execution of the search warrant, Dodge County, Nebraska, Sheriff Dan Weddle observed in the defendant's bedroom a short, plastic straw lying on top of a dresser (R25:1-11; Exhibit 6).There was a white, powdery, crystalline substance in and around the straw, which the Sheriff believed to be cocaine (R25:12-15; R26:3-21). Sheriff Weddle also observed a second plastic straw on the shelf on the dresser, which also had a white, powdery substance in and around it (R27:3-22).

Within an inch or two of the second straw was a small, red, round container (R27:15-25; R29:1-8; Exhibit 7). Sheriff Weddle opened the red container and observed a white, powdery, crystalline substance inside (R29:23-25; R32:1-2).

In the living room of the defendant's trailer home, Sheriff Weddle observed a "bullet" used to snort cocaine (R32:13-33:5; Exhibit 11). He also observed a glass box containing a residue of white powder, hollowed ballpoint

pens, and razor blades with white powder on them (R33:12-25; R35:1-36:8; Exhibits 9 and 10).

The officers executing the search warrant seized, from the defendant's bedroom, 93 items of gambling paper, a pay-off book, pickle cards, and other miscellaneous items (Exhibit 12A). The officers also seized, from the defendant's bedroom, the red container and the two plastic straws, all of which contained a white, powdery substance later determined to be cocaine (Exhibit 12A).

The defendant was charged with and convicted of possession of cocaine in violation of Neb.Rev.Stat. § 28-416(3) (Cum. Supp. 1986), promoting gambling in violation of Neb.Rev.Stat. § 28-1102 (Reissue 1985), and possession of gambling papers in violation of Neb.Rev.Stat. § 28-1105 (Cum. Supp. 1986). On appeal to the Supreme Court of Nebraska the defendant's convictions were affirmed.

REASONS WHY THE PETITION SHOULD BE DENIED

1. This Court recently held, in *California v. Greenwood*, that an individual has no reasonable expectation of privacy in garbage placed for collection outside the curtilage of his or her home.

In *California v. Greenwood*, ___U.S. ___, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988), this court examined a case in which law enforcement officers asked the defendant's regular trash collector to pick up the plastic garbage bags that the plaintiff left for collection outside his home and to turn them over to the officers. The trash collector

cooperated with the officers. The officers searched the plastic garbage bags and found items indicative of narcotics use. The officers searched the defendant's garbage on more than one occasion, and each time found evidence of narcotics use. The officers obtained a warrant to search the defendant's home. The search of his home disclosed evidence of narcotics trafficking.

In *Greenwood*, 108 S.Ct. at 1628, this Court stated: "An expectation of privacy does not give rise to Fourth Amendment protection, however, unless society is prepared to accept that expectation as objectively reasonable. Here, we conclude that respondents exposed their garbage to the public sufficiently to defeat their claim to Fourth Amendment protection." This Court further stated:

> Accordingly, having deposited their garbage "in an area particularly suited for public inspection and, in a manner of speaking public consumption, for the express purpose of having strangers take it," *United States v. Reicherter*, 647 F.2d 397, 399 (CA3 1981), respondents could have had no reasonable expectation of privacy in the inculpatory items that they discarded.

Greenwood, 108 S.Ct. at 1629. In *Greenwood*, 108 S.Ct. at 1630, this Court cited *United States v. Thornton*, 746 F.2d 39 (D.C. Cir. 1984), for the principle that "the overwhelming weight of authority rejects the proposition that a reasonable expectation of privacy exists with respect to trash discarded outside the home and the curtilege [sic] thereof."

2. The Supreme Court of Nebraska properly applied the holding of this Court in the *Greenwood* case to the facts presented in the instant case.

In affirming the defendant's convictions, the Supreme Court of Nebraska properly applied the holding of this Court in *Greenwood* to the facts presented in the instant case. In the Supreme Court of Nebraska the defendant contended, as he now contends, that certain incriminating evidence should have been suppressed because the search warrant authorizing the search of his rented trailer house was based in part upon information obtained from trash placed for collection outside the trailer house.

In its written Opinion, the Supreme Court of Nebraska found that the defendant had the use of an area extending to twelve feet behind the trailer house. The court found that the garbage cans, from which the law enforcement officers obtained the trash they examined, were located approximately four feet from the back door of the trailer in which the defendant resided. The court further found that "[t]he district court made no finding as to whether the garbage in question was within the curtilage of defendant's property, but it appears that the placement of the garbage was in a location accessible to the public and placed for collection." *State v. Trahan*, 229 Neb. 683, 688, 428 N.W.2d 619, 623 (1988).

The Supreme Court of Nebraska stated:

> "[A] person's capacity to claim the protection of Article I, § 7, of the Nebraska Constitution as to unreasonable searches and seizures like its counterpart, the fourth amendment of the U.S. Constitution, depends

> upon whether the person who claims such a protection has a legitimate expectation of privacy in the invaded place."

State v. Trahan, 229 Neb. 683, 688, 428 N.W.2d 619, 623 (1988), *quoting State v. Hodge and Carpenter*, 225 Neb. 94, 102, 402 N.W.2d 867, 873-4 (1987), and *State v. Havlat*, 222 Neb. 554, 385 N.W.2d 436 (1986). The Supreme Court of Nebraska held that "[g]arbage left for collection at a designated location and accessible to the public shall not be accorded constitutional protection." *Trahan*, 229 Neb. at 689, 428 N.W.2d at 623.

The defendant had no reasonable expectation of privacy in garbage placed for collection outside his home. The Supreme Court of Nebraska properly found that the defendant's garbage was in a location accessible to the public and that it was placed for collection. The facts of this case are not distinguishable from the facts presented in the *Greenwood* case recently decided by this Court. The Petition for Writ of Certiorari should be denied.

CONCLUSION

The defendant had no reasonable expectation of privacy in garbage accessible to the public and placed for collection outside his rented trailer home. The Petition for Writ of Certiorari should be denied.

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